

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.37 Motion to Suppress Evidence Seized Without a Search Warrant

3. Seizure of Items in Plain View

Insert the following language after the partial paragraph at the top of page 91:

The plain view doctrine may justify an officer's seizure of items not specifically enumerated in a search warrant if the incriminating nature of the items seized was immediately apparent to the officer, and the officer was lawfully in the position from which the items were seen. *People v Fletcher*, ___ Mich App ___, ___ (2004). After the defendant's wife was killed in the home she shared with the defendant, police officers obtained a warrant to search for "evidence of a fatal shooting including but not limited to any and all weapons and ammunition, spent casings, blood and/or any objects which may be on the premises which appear to have blood stains upon them" *Fletcher, supra* at ___. During the warrant's execution, an officer seized items contained in an expandable file folder in a closet in the defendant's home office. *Fletcher, supra* at ___. Although the items seized from the defendant's office were not bloodstained, the officer seized the items because their incriminating nature was immediately apparent—the defendant's wife had been murdered in the home, and the file folder contained photographs of, and romantic letters from, a woman the officer recognized as a district court judge. *Fletcher, supra* at ___.

The defendant argued that the items taken from the file folder were unlawfully seized because the searching officer should have "ceased any further intrusion into defendant's privacy" when it became apparent to the officer that the items in the folder were not among the items listed in the search warrant. *Fletcher, supra* at ___. According to the defendant, the officer discovered evidence of the defendant's extramarital affair as a result of the officer's illegal search, and any evidence in the file folder should be suppressed as fruit of an illegal search. *Fletcher, supra* at ___. The defendant argued that the evidence was

not lawfully obtained under the plain view doctrine because the plain view doctrine prohibits the seizure of evidence whose incriminating nature was discovered by exceeding a warrant's scope or by even the most minimal search not otherwise justified by an exception to the warrant requirements. *Fletcher, supra* at ____.

Relying on *People v Custer*, 456 Mich 319 (2001), the Michigan Court of Appeals concluded that the officer's examination of the file folder's contents in *Fletcher* paralleled the officer's examination of photographs seized from the defendant's pocket in *Custer*. *Fletcher, supra* at _____. The Court explained that the officer in *Custer* lawfully seized the photographs from the defendant because the officer had probable cause to believe that the items in the defendant's pocket contained blotter acid. *Fletcher, supra* at _____. According to the Court:

“Once an object is lawfully seized, a cursory examination of the exterior of that object, like that which occurred here, is not, in our judgment, a constitutional ‘search’ for purposes of the Fourth Amendment. . . . This is true because a cursory examination of the exterior of an object that has already been lawfully seized by the police will produce no *additional* invasion of the individual’s privacy interest.’ [*Custer, supra* at 333-334 (emphasis in original).]

* * *

“[W]e conclude that the point where [the officer] looked inside the envelope is analogous to when the police officer in *Custer* removed the objects from the defendant’s pocket and saw from their back that they were photographs and not a blotter acid card. Just as the *Custer* defendant’s privacy interest in the photos became sufficiently diminished to allow the officer to examine them by turning the photos over, defendant’s privacy interest in the contents of the expandable envelope became sufficiently diminished to allow [the officer] to make a cursory review of the items contained in the envelope. [The officer] testified that he immediately recognized the women [sic] in the photograph as [a] district court Judge [] and the romantic letters contained within the envelope were on [the Judge]’s office stationary [sic]. Thus, the incriminating nature of the contents of the expandable envelope was readily apparent and in plain view once the contents of the expandable envelope were exposed. The expandable envelope was lawfully seized, it was lawfully opened, and its content was lawfully exposed. [The officer] could therefore lawfully examine the contents of the envelope. The trial court did not err in denying the motion to suppress.” *Fletcher, supra* at _____. (Internal citations omitted.)